

sca416198j

.FO 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4161 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

2. To be referred to the Reporter or not? No.

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

KATHAVA SEVA SAHAKARI MANDALI LIMITED

Versus

PRAHALATDRAI SHIVSHANKAR PANDYA

Appearance:

MR SHIRISH JOSHI for Petitioner

MR DS VASAVADA for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 04/08/98

ORAL JUDGEMENT

Rule. Mr. Vasavada waives service of Notice of

Rule on behalf of the respondent. Kathva Seva Sahakari Mandli Ltd., has filed the present petition to challenge the order passed on the application given by the respondent in complaint no.7 of 1992 initiated on 15.4.1996 which has been made absolute on 4.7.96. The respondent is working as a Secretary with the petitioner. He has raised an industrial dispute and the matter is pending before the Labour Court, Bhavnagar for deciding said industrial dispute raised by him. In the said Reference the respondent gave an application and by the said application said society sought an order of injunction restraining present petitioner society from appointing anybody till final disposal of this proceedings. The Labour Court was pleased to allow said application and hence the society has come before this court.

2. At present the elected members of the society are not managing the affairs of the society and the Registrar of Co-operative Societies is pleased to appoint a custodian for the management of the affairs of the said society. There is dispute between the custodian of the society and the present respondent. It is the claim of the custodian that the respondent does not work; whereas it is the claim of the respondent Secretary that he is not allowed to work. It is not necessary for me to go into this controversy and find out which of the two claims is correct as no such prayer is made in the matter before me. It is submitted by the learned advocate for the petitioner that accounts of the said society are not completed and on account of incomplete accounts, they are not in a position to take steps for making recovery of the dues payable to the society and for the purpose of accounts as well as for taking steps for making recovery they want to make additional appointment on adhoc basis. It is further stated that they are not going to any way affect either the service or service conditions of the respondent and the action of making additional appointment will not take away any service right of the respondent. The respondent at the most can ask the court to restrain the employer from removing him and appointing anybody in his place but he has no right to ask the court to injunct the employer from making any fresh appointment. Therefore, in the circumstances, the order passed by the Labour Court restraining the society by ordering status quo as regards its employees will have to be set aside and in its place the following order is passed. The petitioner society is restrained from dismissing the respondent and taking any steps affecting the service conditions of the respondent till the final disposal of the Reference pending before the Labour Court. If the

petitioner society and its custodian intends to make any appointment, said appointment should be on adhoc basis and not exceeding a period of 11 months. Rule is made absolute in the above terms with no order as to costs.

(S.D.Pandit.J)